

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ZAHIR NASERI,

Plaintiff,

v.

CITY AND COUNTY OF SAN  
FRANCISCO,

Defendant.

Case No. [24-cv-05413-TSH](#)

**ORDER DISMISSING FEDERAL  
CLAIMS WITHOUT LEAVE TO  
AMEND; ORDER REMANDING NON-  
FEDERAL CLAIMS TO SAN  
FRANCISCO SUPERIOR COURT**

Re: Dkt. No. 45

**I. INTRODUCTION**

Pending before the Court is Defendant City and County of San Francisco's Motion to Dismiss Plaintiff's Third Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 45. Plaintiff Zahir Naseri filed an Opposition (ECF No. 46) and Defendant filed a Reply (ECF No. 47). The Court finds this matter suitable for disposition without oral argument. *See* Civ. L.R. 7-1(b). For the reasons stated below, the Court **GRANTS** the motion as to the federal claims and **REMANDS** the non-federal claims to state court.<sup>1</sup>

**II. BACKGROUND**

Plaintiff Zahir Naseri has worked as a "TNC" (transportation network company) driver for Uber and Lyft in the San Francisco Bay Area for over nine years, including in the City and County of San Francisco and at the San Francisco International Airport ("SFO"). Third Am. Compl. ("TAC") at 2, Factual Allegations ¶ 1, ECF No. 44.

Mr. Naseri alleges that on June 24, 2023, he was driving for Uber at SFO with the Lyft application turned off. *Id.* at 3, ¶ 2. Mr. Naseri alleges he was "properly displaying an Uber

<sup>1</sup> The parties consent to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c). ECF Nos. 10, 15.

1 placard.” *Id.* An SFO enforcement officer and an unidentified coworker stopped Mr. Naseri and  
 2 told him that his Lyft placard was not in compliance with airport policy because it was a red color,  
 3 and that a purple placard was required. *Id.* Mr. Naseri alleges that he told these SFO staff  
 4 members that the Lyft permit for SFO does not mention the color of the placard. *Id.* ¶¶ 3, 4. Mr.  
 5 Naseri alleges that the SFO enforcement officer<sup>2</sup> “lost his temper,” seized Mr. Naseri’s Lyft and  
 6 Uber placards and emblems without his consent, ordered Mr. Naseri to exit his car and told him  
 7 that he was under arrest. *Id.* ¶ 3. Mr. Naseri alleges that during this encounter, the SFO  
 8 enforcement officer called Mr. Naseri a “Middle Eastern driver.” *Id.* ¶ 3.

9 On June 24, 2024, an SFO staff member contacted Uber and Lyft to have Mr. Naseri and  
 10 his vehicle permanently removed from SFO. *Id.* ¶ 6 and Ex. A to TAC (ECF No. 44 at 37–39). In  
 11 response, Lyft permanently banned Mr. Naseri and his vehicle from SFO and Uber banned Mr.  
 12 Naseri from all California airports. TAC ¶ 6. Mr. Naseri received no prior notice or opportunity  
 13 to contest these bans. *Id.* Mr. Naseri alleges Defendant “impos[ed] harsher penalties on Plaintiff  
 14 than on other Transportation Network Company (TNC) drivers who committed similar or lesser  
 15 infractions.” *Id.* ¶ 50. Mr. Naseri alleges that while he received a permanent ban, “[o]ther TNC  
 16 drivers committing similar or lesser infractions, such as displaying incorrect placards, were given  
 17 warnings or fines rather than a permanent ban.” *Id.* ¶ 51.

18 Mr. Naseri filed this action against Defendant City and County of San Francisco  
 19 (“Defendant” or “the City”) in Superior Court for the City and County of San Francisco on July  
 20 15, 2024, alleging violations of Title VII of the Civil Rights Act of 1964 and violation of Article 1,  
 21 Section 13 of the California State Constitution. Compl. ¶¶ 9–12, ECF No. 1 at 7–8. Defendant  
 22 was properly served on July 19, 2024. ECF No. 1 (Notice of Removal). On August 19, 2024,  
 23 Defendant removed the action to this Court pursuant to 28 U.S.C. §§ 1441 and 1446. *Id.*

24 On September 9, 2024, Mr. Naseri filed his First Amended Complaint (FAC). In his FAC,  
 25 Mr. Naseri alleged violations of Title VII of the Civil Rights Act of 1964; Article I, Section 13 of  
 26 the California Constitution; the Fair Labor Standards Act; 42 U.S.C. § 12203, California Fair

27  
 28 <sup>2</sup> In his TAC, Plaintiff alleges that “Defendant” engaged in this conduct. However, the City and  
 County of San Francisco is the only named defendant in this action.

1 Employment and Housing Act (“FEHA”), and California Unruh Civil Rights Act. See Am.  
 2 Compl. ¶¶ 12–20, ECF No. 23. On September 23, 2024, Defendant filed a motion to dismiss  
 3 Plaintiff’s FAC. ECF No. 27. On November 13, 2024, the Court granted Defendant’s motion to  
 4 dismiss Plaintiff’s claims without leave to amend and granted Plaintiff leave to amend to assert  
 5 other legal claims. ECF No. 32 at 10.

6 On November 22, 2024, Mr. Naseri filed his Second Amended Complaint (“SAC”). ECF  
 7 No 33, SAC. In his SAC, Mr. Naseri alleged violations of San Francisco’s City Transportation  
 8 Policy; San Francisco Airport Rules and Regulations; San Francisco Airport TNC Policies; 42  
 9 U.S.C. § 1983; violations of the Equal Protection and Due Process Clauses of the Fourteenth  
 10 Amendment of the U.S. Constitution; the Fourth Amendment of the U.S. Constitution;  
 11 California’s Unfair Competition Law (UCL); San Francisco Non-Discrimination Ordinances;  
 12 Article 1, Section 7 of the California Constitution; and the California Administrative Procedure  
 13 Act (Cal. Gov. Code § 11340). See SAC ¶¶ 16–26. On December 18, 2024, Defendant filed a  
 14 motion to dismiss Plaintiff’s SAC. ECF No. 37. On January 22, 2025, the Court granted  
 15 Defendant’s motion to dismiss with leave for Plaintiff to amend his federal claims and to allege  
 16 claims under municipal law and without leave to amend his state law claims. ECF No. 43 at 14–  
 17 15.

18 On January 24, 2025, Mr. Naseri filed his Third Amended Complaint (“TAC”), which is  
 19 now the operative complaint in this action. ECF No 44, TAC. In his TAC, Mr. Naseri alleges  
 20 eighteen claims. Mr. Naseri alleges violation of the First Amendment of the U.S. Constitution  
 21 (Claims 1 and 16); violation of the Due Process Clause of the Fourteenth Amendment of the U.S.  
 22 Constitution (Claim 2); violation of the Equal Protection Clause of the Fourteenth Amendment  
 23 (Claim 3); excessive fines in violation of the Eighth Amendment (Claim 4); unlawful search and  
 24 seizure in violation of the Fourth Amendment (Claim 5); violation of Article 33 of the San  
 25 Francisco Police Code (Claims 6–9); violation of the California Public Records Act (Claim 10);  
 26 destruction of evidence in violation of California Penal Code § 135 (Claim 11); misuse of the  
 27 discovery process in violation of California Code of Civil Procedure § 2023.010 (Claim 12); “Due  
 28 Process Rights Violations” (Claim 13); “Destruction of Evidence Presumption” in violation of

California Evidence Code § 413 (Claim 14); Destruction of Public Records in violation of California Government Code § 34090 (Claim 15); violation of the San Francisco Records Management Policy, Admin. Code Ch. 67 (Claim 17); and obstruction of justice, 18 U.S.C. § 1505 (Claim 18). *See* TAC ¶¶ 24–133. Mr. Naseri seeks, inter alia, compensatory and punitive damages, monetary remuneration for pain and suffering, and that he be reinstated as a driver at SFO. *Id.* at 34–35 (Demand for Relief). On February 7, 2025, Defendant filed a motion to dismiss Plaintiff’s TAC. ECF No. 45. On February 9, Plaintiff filed an Opposition (ECF No. 46) and on February 28, 2025, Defendant filed a Reply (ECF No. 47).

### III. LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) “tests the legal sufficiency of a claim. A claim may be dismissed only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Cook v. Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011) (citation and quotation marks omitted). Rule 8 provides that a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P. 8(a)(2). Thus, a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plausibility does not mean probability, but it requires “more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint must therefore provide a defendant with “fair notice” of the claims against it and the grounds for relief. *Twombly*, 550 U.S. at 555 (quotations and citation omitted).

In considering a motion to dismiss, the court accepts factual allegations in the complaint as true and construes the pleadings in the light most favorable to the nonmoving party. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93–94 (2007). However, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

If a Rule 12(b)(6) motion is granted, the “court should grant leave to amend even if no

request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (citations and quotations omitted). A court “may exercise its discretion to deny leave to amend due to ‘undue delay, bad faith or dilatory motive on part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . . , [and] futility of amendment.’” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892–93 (9th Cir. 2010) (alterations in original) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

#### IV. DISCUSSION

##### A. Federal Claims

Plaintiff alleges eight claims under federal law. Mr. Naseri alleges violation of the First Amendment of the U.S. Constitution (Claims 1 and 16); violation of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution (Claim 2); violation of the Equal Protection Clause of the Fourteenth Amendment (Claim 3); excessive fines in violation of the Eighth Amendment (Claim 4); and unlawful search and seizure in violation of the Fourth Amendment (Claim 5); “Due Process Rights Violations” (Claim 13); and obstruction of justice, 18 U.S.C. § 1505 (Claim 18). TAC ¶¶ 24–85, 122–23, 128–29, 132–33.

##### 1. Constitutional Claims

“[A] litigant complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution but must utilize 42 U.S.C. § 1983.” *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001). The Civil Rights Act, codified at 42 U.S.C. § 1983, provides in relevant part:

Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

“[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). “[M]unicipalities and other

1 local government units . . . [are] among those persons to whom § 1983 applies.” *Monell v. Dep’t*  
2 *of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978).

3 The City and County of San Francisco, a municipality, is the sole Defendant in this action.  
4 Plaintiff repeatedly refers to the plural “Defendants” in his TAC (TAC ¶¶ 2, 24–26, 28–33, 35, 37,  
5 38, 40–43, 49–55, 57–62, 64–69, 71–77, 79–85). Plaintiff’s TAC also repeatedly alleges that the  
6 defendant or defendants are individuals who work for the City and County of San Francisco. TAC  
7 Factual Allegations ¶¶ 3, 5, 6, 35, 40(c), 43(b), 49, 64(a), 68(c), 68(d), 71, 76(c), 76(d), 79, 84(c),  
8 84(d). However, Plaintiff names as a defendant only “San Francisco International Airport[,]”  
9 “operat[ing] under the authority of the City and County of San Francisco.” TAC “Parties” ¶ 3; *see*  
10 *also* TAC caption page (“Zahir Naseri, Plaintiff. vs. City and County of San Francisco,  
11 Defendant.”).

12 To establish municipal liability for a constitutional violation under Section 1983, a plaintiff  
13 “must prove that ‘action pursuant to official municipal policy’ caused their injury.” *Connick v.*  
14 *Thompson*, 563 U.S. 51, 60 (2011) (quoting *Monell*, 563 U.S. at 691). “The ‘official policy’  
15 requirement was intended to distinguish acts of the *municipality* from acts of *employees* of the  
16 municipality, and thereby make clear that municipal liability is limited to action for which the  
17 municipality is actually responsible.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479 (emphasis  
18 in original). Official municipal policy includes “the decisions of a government’s lawmakers, the  
19 acts of its policymaking officials, and practices so persistent and widespread as to practically have  
20 the force of law.” *Connick*, 563 U.S. at 61 (citations omitted). Such policy or practice must be a  
21 “moving force behind a violation of constitutional rights.” *Dougherty v. City of Covina*, 654 F.3d  
22 892, 900 (9th Cir. 2011) (citing *Monell*, 436 U.S. at 694). An official municipal policy may be  
23 either formal or informal. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 131 (1988)  
24 (acknowledging that a plaintiff could show that “a municipality’s actual policies were different  
25 from the ones that had been announced.”).

26 In the Ninth Circuit, a municipality may be liable under section 1983 under three possible  
27 theories. *Rodriguez v. Cnty. of Los Angeles*, 891 F.3d 776, 802 (9th Cir. 2018). The first is where  
28 “execution of a government’s policy or custom, whether made by its lawmakers or by those whose

edicts or acts may fairly be said to represent official policy, inflict[ed] the injury.” *Id.* (quoting *Monell*, 436 U.S. at 694). “A policy or custom may be found either in an affirmative proclamation of policy or in the failure of an official ‘to take any remedial steps after [constitutional] violations.’” *Gomez v. Vernon*, 255 F.3d 1118, 1127 (9th Cir. 2001) (quoting *Larez v. City of Los Angeles*, 946 F.2d 630, 647 (9th Cir. 1991) (holding that a jury could find a policy or custom of using excessive force from the police chief’s failure to discipline officers for such conduct)); *see also Hunter v. Cnty. of Sacramento*, 652 F.3d 1225, 1235 (9th Cir. 2011) (holding “evidence of a recurring failure to investigate and discipline municipal officers for constitutional violations can help establish the existence of an unconstitutional practice or custom” of using excessive force). Second, “a local government can fail to train employees in a manner that amounts to ‘deliberate indifference’ to a constitutional right, such that ‘the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.’” *Rodriguez*, 891 F.3d at 802 (quoting *City of Canton v. Harris*, 489 U.S. 378, 390 (1989)). Third, a municipality may be liable under section 1983 if “the individual who committed the constitutional tort was an official with final policy-making authority or such an official ratified a subordinate’s unconstitutional decision or action and the basis for it.” *Id.* at 802–03 (quoting *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1097 (9th Cir. 2013) (internal quotation marks and citation omitted)).

Plaintiff repeatedly alleges that Defendant’s “actions . . . reflect a policy, custom, or practice of . . . imposing disproportionate penalties and denying due process to individuals accused of minor infractions” (TAC ¶ 40(a)), as well as an “established pattern of disparate enforcement” under which the City “selectively impos[es] harsher penalties based on race, ethnicity, or other protected characteristics.” TAC ¶¶ 40(a), 53(a). *See also id.* ¶¶ 60(a) (alleging pattern or practice of imposing excessive penalties without justification), 68(a) (alleging policy, custom or practice of tolerating or encouraging excessive enforcement actions, including unlawful searches and seizures at SFO), 76(a) (same), 84(a) (same). But these allegations are entirely conclusory. The TAC does not contain specific factual allegations supporting the existence of a policy, custom, or practice of denial of due process, disparate enforcement, excessive penalties or excessive enforcement actions



beyond Plaintiff's own experiences. Accordingly, Plaintiff fails to state a *Monell* claim against the City based on the existence of an alleged unconstitutional policy or custom.

Plaintiff also alleges that Defendant "failed to adequately train and supervise [SFO] enforcement officers." TAC ¶ 40(d); *see also id.* ¶¶ 40(e), 53(b), 68(b), 76(b), 84(b). "A plaintiff alleging a failure to train claim under *Monell* must show: (1) she was deprived of a constitutional right, (2) the municipality had a training policy that amounts to deliberate indifference to the constitutional rights of the persons with whom its police officers are likely to come into contact, and (3) her constitutional injury would have been avoided had the municipality properly trained those officers." *Bryant v. City of Antioch*, No. 21-Ccv-00590-TSH, 2021 WL 3565443, at \*7 (N.D. Cal. Aug. 12, 2021) (citing *Young v. City of Visalia*, 687 F. Supp. 2d 1141, 1148 (E.D. Cal. 2009)). Plaintiff alleges that "the SFO enforcement officer" with whom Plaintiff interacted demonstrated a lack of knowledge about the date, color, and nature of the alleged infraction" and that Defendant's "actual enforcement practices diverged from its announced policies, demonstrating a failure to ensure consistent training and supervision." TAC ¶¶ 40(d), 40(e). Plaintiff further alleges that Defendant "failed to implement adequate training, oversight, or safeguards to prevent discriminatory practices, exhibiting deliberate indifference to individuals' constitutional rights." *Id.* ¶ 53(b). *See also id.* ¶¶ 60(b), 68(b), 76(b), 84(b). These allegations of deliberate indifference are threadbare and conclusory, and Plaintiff's factual allegations are insufficient to establish the existence of a training policy that amounted to deliberate indifference to the constitutional rights of persons with whom SFO enforcement officers were likely to come into contact. Plaintiff further does not show that his alleged constitutional injuries would have been avoided had Defendant properly trained the officers. Plaintiff therefore has not established municipal liability for a constitutional violation under Section 1983 based on a failure to train SFO enforcement officers.

Accordingly, Mr. Naseri's constitutional claims must be dismissed.

## **2. Obstruction of Justice, 18 U.S.C. § 1505**

Mr. Naseri alleges that Defendant "may have obstructed justice under 18 U.S.C. § 1505" by allegedly tampering evidence and withholding documents critical to Plaintiff's case. TAC



¶¶ 132–33. 18 U.S.C. § 1505 is a federal criminal law regarding obstruction of agency proceedings; it concerns evading compliance with civil investigative demands brought by the government agencies. Mr. Naseri does not allege that Defendant engaged in any conduct prohibited by Section 1505. Moreover, Section 1505 cannot form the basis for a civil lawsuit brought by Mr. Naseri, as it is a criminal statute that does not provide a private right of action. *See, e.g., Hamilton v. Reed*, 29 F. App’x 202, 204 (6th Cir. 2002). Accordingly, Mr. Naseri cannot state a claim for violation of 18 U.S.C. § 1505.

Accordingly, the Court **GRANTS** Defendant’s motion to dismiss Plaintiff’s federal claims against the City and County of San Francisco.

### 3. Leave to Amend

The Ninth Circuit has “repeatedly held that a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Courts have broader discretion in denying motions for leave to amend after leave to amend has already been granted. *See Rich v. Shrader*, 823 F.3d 1205, 1209 (9th Cir. 2016) (“[W]hen the district court has already afforded a plaintiff an opportunity to amend the complaint, it has wide discretion in granting or refusing leave to amend after the first amendment, and only upon gross abuse will its rulings be disturbed.”); *Chodos v. W. Publ’g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002).

The Court has twice dismissed Plaintiff’s federal claims and twice given him leave to amend those claims. ECF No. 32 at 10; ECF No. 43 at 15. The previous dismissal order dismissed Plaintiff’s federal claims for failure to satisfy *Monell*, and as discussed above, the *Monell* allegations in the third amended complaint are devoid of any factual content. The Court thinks that three attempts at pleading federal claims, including two attempts at pleading federal constitutional claims, are a sufficient opportunity, especially when Plaintiff’s third amended complaint came nowhere close to satisfying *Monell*. Moreover, no leave to amend is warranted for Plaintiff’s claim under 18 U.S.C. § 1505, as he cannot sue for violation of a federal criminal statute.

1 Accordingly, the Court **DENIES** Plaintiff leave to amend his federal claims.

2 **B. State and Municipal Law Claims**

3 28 U.S.C. § 1367(c)(3) states that “[t]he district courts may decline to exercise  
4 supplemental jurisdiction over a claim under subsection (a) if . . . the district court has dismissed  
5 all claims over which it has original jurisdiction . . .” The Court has dismissed all claims over  
6 which it has original jurisdiction. The Court has original jurisdiction over Plaintiff’s federal  
7 claims under 28 U.S.C. § 1331, and those claims have now been dismissed without leave to  
8 amend. The Court does not have original jurisdiction over Plaintiff’s claims under state or  
9 municipal law, as there is no diversity of citizenship between the parties. TAC Parties ¶¶ 2-3;  
10 Compl., ECF No. 1 ¶¶ 2-3 (no diversity of citizenship when lawsuit first filed).

11 Accordingly, the Court declines to exercise supplemental jurisdiction and **REMANDS**  
12 Plaintiff’s non-federal claims to San Francisco Superior Court.

13 **IT IS SO ORDERED.**

14  
15 Dated: May 29, 2025

16   
17 THOMAS S. HIXSON  
18 United States Magistrate Judge  
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